

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:22-cv-00240-MR-WCM

FARRON BUNCH, and
BRENDA BUNCH,

Plaintiffs,

v.

SWITCHCARS, INC., and
DOUGLAS ARTHUR TABBUTT,

Defendants.

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ORDER

This matter is before the Court on Plaintiffs' Notice of Voluntary Dismissal (the "Notice," Doc. 16).

Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure provides that a plaintiff may dismiss an action without a court order by filing a notice of dismissal "before the opposing party serves either an answer or a motion for summary judgment."

"Once an answer or a motion for summary judgment has been filed, a plaintiff may obtain a voluntary dismissal only by a stipulation of dismissal signed by all parties who have appeared in the action, Fed.R.Civ.P. 41(a)(1)(ii), or by court order, 'on terms that the court considers proper,' Fed.R.Civ.P. 41(a)(2)." USA Trouser, S.A. de C.V. v. Int'l Legwear Grp., Inc., No. 1:11-CV-00244-MR-DLH, 2015 WL 6473252, at *5 (W.D.N.C. Oct. 27, 2015), *dismissed*

sub nom. USA Trouser, S.A. De C.V. v. Andrews, No. 16-1144, 2016 WL 11848623 (4th Cir. Nov. 7, 2016)).

Here, Defendants have filed an answer. Doc. 15. Consequently, on September 18, 2023, Plaintiffs were directed to show cause why the Notice, which states it has been filed pursuant to Rule 41(a)(1)(A)(i), should not either be disregarded or construed as being a motion for an order dismissing the action pursuant to Rule 41(a)(2).

On September 25, 2023, Plaintiffs filed a Memorandum of Law in Support of the Plaintiffs' Voluntary Dismissal. Doc. 17. That document provides various reasons why Plaintiffs wish to dismiss this case voluntarily. It does not, however, explain how the Notice complies with Rule 41(a)(1)(A)(i) or is otherwise procedurally proper.

Accordingly, Plaintiffs' Notice of Voluntary Dismissal (Doc. 16) is ineffective and is **DISREGARDED AS PROCEDURALLY IMPROPER**.

It is so ordered.

Signed: September 26, 2023



W. Carleton Metcalf
United States Magistrate Judge

